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IN THE

SUPREME COURT

OF THE
UNITED STATES

OCTOBER TERM, 1974

NO. 74-1474

PETER M. DICKSON, *Petitioner*,

v.

CORRINE M. DICKSON, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR REHEARING

FREDERICK O. FROHMADER
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Counsel for Petitioner

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PETITION FOR REHEARING

THE PETITIONER HEREIN respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on October 6, 1975, and (2) granting the petition. As grounds for this motion, petitioner states the following:

1. THE DECISION IN *ERZNOZNIK v. CITY OF JACKSONVILLE*, 95 S. Ct. 2268 (1975).

On June 23, 1975, after the petitioner had filed his original petition for certiorari, this Court in *Erznoznik v. City of Jacksonville*, 95 S. Ct. 2268 (1975) struck down a municipal ordinance making it a public nuisance to show films containing any nudity at a drive-in theatre whose screen is visible from any public place or public street. This Court reasoned that the ordinance in question was an improper prior restraint of free speech. Holding that absent circumstances where a speaker invades the privacy of the home, or where "the degree of captivity makes it impractical for the unwilling viewer or auditor to avoid exposure" the solution for someone to avoid unwanted speech is simply not to listen. This Court also pointed out that the Jacksonville ordinance flatly condemned films with nudity, regardless of any other content or the manner presented, and that this type of classification was too broad to pass the scrutiny of the Constitution.

The instant case is analogous to *Erznoznik* in that the petitioner has been ordered not to say certain things (i.e. "she is my wife") in any context whatsoever, and to any person whatsoever. The argument against prior restraint would seem even stronger here, since there is no showing that any substantial private interests of the respondent are being invaded in an intolerable manner by every expression of the petitioner's belief. Indeed, no one else is forbidden from making the statements or expressing the beliefs which the petitioner espouses, and this does not seem to invade the respondent's interests; therefore, it is reasonable that the petitioner should likewise enjoy the same freedom of speech which literally every other person in the country has, and should not be subject to the improper prior restraint which has been imposed by the Court below.

For these various reasons, therefore, the denial of certiorari should be reconsidered to the end that this case be heard and resolved consistent with the *Erznoznik* case.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully Submitted

FREDERICK O. FROHMADER
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Tacoma, Washington 98402
Counsel for Petitioner

October 24, 1975

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

/s/ Frederick O. Frohmader
Counsel for Petitioner